CALIFORNIA HORSE RACING BOARD

Submitted by Churchill Downs Technology Initiatives Company

California Horse Racing Board				
From	Current Rule Number and Text	Proposed Modifications Received	Comments received	Staff Recommendation
CDTIC	**Section 2086.1 Authorization for Exchange Wagering.** (a) Exchange Wagering may be conducted upon the approval of the Board as provided for in this article and under the provisions of Business and Professions Code sections 19604.5(b)(2) to (7), inclusive. (b) Despite subsection (a) of this regulation, a licensee may conduct exchange wagering on any horse race conducted outside of California where the licensee does not offer exchange wagering to residents of California on that race.	~~. (a)~~ Exchange Wagering may be conducted upon the approval of the Board as provided for in this article and under the provisions of Business and Professions Code sections 19604.5(b)(2) to (7), inclusive. Exchange wagering may only be conducted on those races where the necessary consent has been obtained from the applicable host track and horsemen's group. Specific written consent must be obtained from the applicable host track and horsemen's group to offer antepost market wagers, wagers placed after the start of a race or wagers to lay a horse to lose. (~~b) Despite subsection (a) of this regulation, a licensee may conduct exchange wagering on any horse race conducted outside of California where the licensee does not offer exchange wagering to residents of California on that race.~~	Subdivision (a) of this section provides that exchange wagering may be conducted under the provisions of sections 19604.5(b)(2) to (7) of the statute. Paragraphs (4) through (7) all require an exchange wagering agreement with the racing association or fair and the horsemen's organization. Subdivision (b) goes beyond the authority and fails to recognize the necessary consent rights of tracks and horsemen located outside of California. Exchange wagering is a significantly different form of wagering than parimutuel wagering. The Board acknowledged that repeatedly throughout its Initial Statement of Reasons as justification for these regulations. One of the unique aspects involved in exchange wagering is that a bettor may wager on a horse to lose. Allowing wagers on a horse to lose raises substantial concerns about the impact of such wagers on the integrity of horseracing. Obviously, it is much easier to cause a horse to lose than it is to cause a horse to win. Wagers to lay a horse to lose requires greater diligence to assure fairness and integrity. In fact, the Board recognized this in section 2092.5 of the regulations. There, the Board specifically prohibits all persons who could contribute to a horse losing from wagering on a horse to lose.	

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			9 The Board's prohibition about who may not bet on a horse to lose does not go far enough to address the potential harmful impact on horseracing in California from allowing wagers that a horse will lose. Accordingly, the Board is urged to require the exchange wagering agreements with the racing associations, fairs, and horsemen's organizations (host track interests) to expressly allow or refuse wagers on a horse to lose. Those entities have the greatest stake in maintaining and protecting the integrity of horseracing in California. Each should be able to decide whether the risk to the reputation of horseracing is such that wagers on a horse to lose should be permitted or not.	
CDTIC	**Section 2086.5 Application for License to Operate Exchange Wagering.** (b) An applicant must complete CHRB form 229 (New 05/12) Application for License to Operate Exchange Wagering, hereby incorporated by reference, which shall be available at the Board's headquarters office. The application must be filed not later than 90 days in advance of the scheduled start of operation. A certified check in the amount of $1,400,000 payable to the California Horse Racing Board, or an amount to be determined by the Board to fulfill Business and Professions Code section 19604.5(e)(6), a detailed operating plan as described under Rule 2086.6, Operating Plan Required, and proof of the applicant's compliance with labor provisions of Business and Professions Code section 19604.5(f), must accompany the application.	(b) An applicant must complete CHRB form 229 (New 05/12) Application for License to Operate Exchange Wagering, hereby incorporated by reference, which shall be available at the Board's headquarters office. The application must be filed not later than 90 days in advance of the scheduled start of operation. ~~A certified check in the amount of $1,400,000 payable to the California Horse Racing Board, or an amount to be determined by the Board~~ to fulfill Business and Professions Code section 19604.5(e)(6), a detailed operating plan as described under Rule 2086.6, Operating Plan Required, and proof of the applicant's compliance with labor provisions of Business and Professions Code section 19604.5(f), must accompany the application.	Subdivision (b) of this section requires an application for a license to operate exchange wagering to be accompanied by "a certified check in the amount of $1,400,000, payable to the Board, or an amount to be determined by the Board" pursuant to section 19604.5(e)(6). That paragraph provides, "The board may recover any costs associated with the licensing or regulation of exchange wagering from the exchange wagering licensee by imposing an assessment on the exchange wagering licensee in an amount that does not exceed the reasonable costs associated with the licensing or regulation of exchange wagering." Subdivision (6) of this section raises a number of concerns. The first concern raised by the fee	

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		[Please see our comments, but we feel that the initial statement of reasons should provide detail to support the reasonable costs to be recoverable and that the costs be known up front as this is not insignificant. This is an issue that is difficult to address and should be discussed in detail.]	provision is that the amount of the fee exceeds the authority granted by the Legislature. As noted, the Legislature authorized only the recovery of costs "associated with the licensing or regulation of exchange wagering." The legislation does not authorize the Board to require payment up front accompanying a license application. Further, the fee set out in the regulation of $1.4 million exceeds the "reasonable costs associated with the licensing or regulation of exchange wagering." Any fee above the reasonable costs associated with licensing and regulating exceeds the authority granted by the Legislature. The second concern raised by the fee provision is that nothing is contained in the Initial Statement of Reasons demonstrating the necessity for a fee in the amount of $1.4 million, or in any amount. As a consequence, interested parties are precluded from commenting on the reasonableness of the costs projected by the Board to be required to license and regulate exchange wagering. The absence of information setting out the projected costs defeats the purpose contained in the Administrative Procedure Act of requiring an Initial Statement of Reasons to set out the basis for the proposed regulations so that interested parties have sufficient information to comment. The third concern raised by the fee provision is its lack of clarity. A regulation, to be valid, has to be clear	

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			and understandable to the regulated entities. This regulation is written in the disjunctive. The fee amount is $1.4 million "or an amount to be determined by the board." Potential applicants for a license are provided no certainty about what the fee amount may be. Will it be $1.4 million? More? Less? As noted above, the Board lacks authority to require an up front fee in conjunction with a license application when the statute calls for recovering costs. If the Board, despite that, seeks to collect an up front fee, it must impose that fee by a valid regulation adopted consistently with the requirements of the Administrative Procedure Act. The failure to have included the basis for estimating the projected costs in the Initial Statement of Reasons means the Board has to begin the rulemaking procedure anew. It is not sufficient for the Board, at this time, or in a 15-day notice, to provide that information. The Administrative Procedure Act contemplates that interested parties will have a full 45 days to analyze and prepare comments in response to the justification for a specified fee amount. Without starting anew, any fee imposed pursuant to this regulation is subject to being declared invalid.	
CDTIC	**Section 2086.5 Application for License to Operate Exchange Wagering.** (c) The term of the exchange wagering License shall be not more than 2 years from the date the exchange wagering license is issued, unless otherwise determined by the Board.	(c) The term of the exchange wagering License shall be not more than ~~2~~ 1 year~~s~~ from the date the exchange wagering license is issued, unless otherwise determined by the Board for all licensees.	Subdivision (c) of this section provides that an exchange wagering license term shall be no more than two years, "unless otherwise determined by the board." This provision raises two concerns.	

			The first concern with subdivision (c) is what is the necessity or reasons for setting the term of a license at two years? The Board, in its Initial Statement of Reasons, states that two years "is consistent with current Board practice regarding the term of license provided in advance deposit wagering and minisatellite wagering entities." The statement that other licenses are for the term of two years fails to explain why two years is chosen for an exchange wagering license. Nothing in the Initial Statement of Reasons indicates that the purposes of SB 1072, that is, promoting the economic future of the horse racing industry in California and to foster the potential for increased commerce, employment, and recreational opportunities in California, are best served by a two-year license. Nothing in the Initial Statement of Reasons indicates what administrative benefits are derived from setting a two-year term for advance deposit wagering or minisatellite wagering entities. The essence of the Initial Statement of Reasons statement is simply "this is how we do it" without explanation. The term of the license can have a significant impact on the workability and success of exchange wagering. However, without information as to the basis and the evidence demonstrating the necessity for a two-year term, it is impossible for an interested party to determine whether the two-year term is appropriate or whether the term should be longer or shorter. Again, the	

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			Administrative Procedure Act contemplates interested parties having 45 days to analyze and comment on the asserted basis for determining that a particular regulation is necessary. This is an omission that cannot be remedied by making that information, if it exists, available today or in a 15-day notice. The second concern is that subdivision (c) lacks clarity. The regulation says that the term of a license will be for not more than two years unless otherwise determined by the Board. Accordingly, potential license applicants have no idea, relying on the regulation, what the term of its license will be. What standards will the Board consider in determining whether to change the term of a license? Does the Board contemplate lengthening or shortening the term of a license? Does the Board contemplate lengthening or shortening the term for different applicants? Substantial uncertainty exists with respect to this provision, and as such it fails to meet the clarity standard of the Administrative Procedure Act. The lack of clarity also lends itself to lack of consistent application, as the Board could unfairly grant varying terms of a license to different licensees.	
CDTIC	**Section 2086.5 Application for License to Operate Exchange Wagering.** (d) The Board shall notify the applicant in writing within 30 calendar days from the receipt date if the application is deficient. No later than 90 calendar days following the receipt of the application, the Board shall make a final determination on the application. The Board may approve	(d) The Board shall notify the applicant in writing within 30 calendar days from the receipt date if the application is deficient. No later than 90 calendar days following the receipt of the application, the Board shall make a final determination on the application. The	Subdivision (d) of this section provides that, "The Board **may** approve the application if, after reasonable investigation and inspection, as it deems appropriate, it determines that the applicant has demonstrated that exchange wagers placed through the	

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	the application if, after reasonable investigation and inspection, as it deems appropriate, it determines that the applicant has demonstrated that exchange wagers placed through the exchange will be accurately processed and that there will be sufficient safeguards to protect the public and to maintain the integrity of the horse racing industry in this state. If the Board denies an application, the applicant has 30 calendar days, from the receipt of the Board's denial notification, to request a reconsideration of the Board's decision. The request must be in writing and sent to the Board's headquarters office. The Board shall respond in writing to the reconsideration request within 30 working days from the receipt date of the request. If reconsideration is denied, the applicant may file for judicial review in accordance with Government Code section 11523.	Board ~~may~~ shall approve the application if, the applicant has met all applicable regulatory requirements hereunder. ~~after reasonable investigation and inspection, as it deems appropriate, it determines that the applicant has demonstrated that exchange wagers placed through the exchange will be accurately processed and that there will be sufficient safeguards to protect the public and to maintain the integrity of the horse racing industry in this state.~~ If the Board denies an application, the applicant has 30 calendar days, from the receipt of the Board's denial notification, to request a reconsideration of the Board's decision. The request must be in writing and sent to the Board's headquarters office. The Board shall respond in writing to the reconsideration request within 30 working days from the receipt date of the request. If reconsideration is denied, the applicant may file for judicial review in accordance with Government Code section 11523.	exchange will be accurately processed and that there will be sufficient safeguards to protect the public and to maintain the integrity of the horse racing industry in this state." Three concerns are raised with respect to subdivision (d). The first concern relates to how the Board can determine whether an applicant has satisfied the standards of this subdivision. Exchange wagering is an entirely new concept in wagering on horse races. It differs significantly from the standard parimutuel wager. The question is how will the Board and its staff acquire the expertise to evaluate applications and determine whether the proposed operation plan satisfies the standards of this subdivision. TwinSpires is particularly concerned because it appears that the program contemplated today is largely that proposed by Betfair. The Board's legislative mandate is to implement a program that promotes the economic future of the horse racing industry and to foster increased commerce, employment, and recreational opportunities in California. Clearly, a program designed by a single, potential licensee does not necessarily promote those goals. The Board, no doubt agrees, that what is in California's best interest is to design a program for multiple licensees with the legislative goals uppermost in mind. The second concern relates to the	

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			provision's lack of clarity. The provision authorizes the Board to approve or not an application even if it meets the demonstration set out in the regulation. The implication of the provision is that there may be other standards that the Board is looking at, that if met will result in approval and if not met will result in denial. If that is the case, the provision lacks clarity because those other standards are not set out. If there are no other standards, then why is the regulation ambiguous as to whether the Board will approve the application or not if those standards are met? These questions demonstrate the lack of clarity of this provision. The third concern with subdivision (d) of this section is that the regulation appears to provide the Board with discretion as to whether to approve or deny a license even if the specified standards are met. Nothing in the Initial Statement of Reasons discusses this provision at all. Accordingly, no evidence, certainly no substantial evidence, exists to demonstrate the necessity for providing that kind of discretion or flexibility to the Board. The absence of evidence demonstrating the necessity for this provision renders the provision invalid. Accordingly, if the Board wants to preserve discretion and flexibility, at a minimum, it must demonstrate the need for that discretion and flexibility with substantial evidence.	
CDTIC	**Section 2086.6 Operating Plan Required.** As part of the exchange wagering license application, and	As part of the exchange wagering license application, and any renewal	This section requires license applicants to submit a detailed operating plan "in a	

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	any renewal application, the applicant shall submit a detailed operating plan in a format and containing such information as required by the Board. At a minimum, the operating plan shall address the following:	application, the applicant shall submit a detailed operating plan in a format and containing such information as may reasonably and consistently be required by the Board. At a minimum, the operating plan shall address the following:	format and containing such information as required by the Board." The section goes on to provide that, at a minimum, the operating plan shall address subdivisions (a) through (i). The provisions of this section raise three concerns. The first concern is the lack of clarity. The section provides that the operating plan shall contain such information as required by the Board. Despite listing in several subdivisions specific information to be included in an operating plan, the implication is that the Board may require other information. What other information is contemplated? That question demonstrates the lack of clarity in this section.	
CDTIC	**(Section 2086.6 Operating Plan Required.** (d) Financial information that demonstrates the financial resources to operate an exchange and a detailed budget that shows anticipated revenue, expenditures and cash flows by month projected for the term of the license.	(d) Financial information that demonstrates the financial resources to operate an exchange and a detailed budget, if one can reasonably be determined, that shows anticipated revenue, expenditures and cash flows by month projected for the term of the license. OR (d) Financial information that demonstrates the financial resources to operate an exchange. ~~and a detailed budget that shows anticipated revenue, expenditures and cash flows by month projected for the term of the license.~~	Subdivision (d) raises a question about the objectivity of the regulation. That subdivision requires financial information about the financial resources of the applicant. No one can quarrel with that requirement. However, the subdivision goes on to require "a detailed budget that shows anticipated revenue, expenditures, and cash flows by month projected for the term of the license." No one has experience with exchange wagering in California or even in the United States. An entity with exchange wagering experience operates such a program in England. As a consequence, only that entity has a basis for providing a "detailed budget" showing anticipated revenues, expenditures, and cash flows by month. In fact, the Initial Statement of Reasons evidences a bias for foreign entities to	

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			conduct exchange wagering in California. It provides, "Most potential California exchange wagering providers currently offer exchange wagering in jurisdictions outside the United States." Certainly, not all potential exchange wagering providers offer exchange wagering outside the United States. TwinSpires does not. The regulations should not be structured with only foreign entities in mind, or to provide an advantage to such entities. Accordingly, the portion of subdivision (d) requiring a detailed budget should be struck.	
CDTIC	**Section 2086.6 Operating Plan Required.** (c) Technology and hardware and software systems information, which shall include a data security policy, as well as a policy for the notification of the Board and account holders of any unauthorized access that may compromise account holders' personal information.	(c) Technology and hardware and software systems information, which shall include a data security policy and safeguards to ensure player protection and integrity including, but not limited to, provisions governing the acceptance of electronic applications for persons establishing exchange wagering accounts, residence and age verification confirmation for persons establishing exchange wagering accounts, the use of identifying factors to ensure security of individual accounts, the requirements for management of funds in exchange wagering accounts, as well as a policy for the notification of the Board and account holders of any unauthorized access that may compromise account holders' personal information.	The second concern is found in subdivision (c). That subdivision pertains to technology and hardware and software systems. The Initial Statement of Reasons seeks to establish necessity for many of the provisions of the regulation that duplicate the statute by saying the wagering public generally turns to the Board's rules and regulations if there is a question of procedure or meaning. It goes on to say that including statutory provisions in the regulation, it will provide clarity for persons who may use the Board's regulations to engage in exchange wagering. That undoubtedly is true for entities that are regulated by the Board as well. As a consequence, subdivision (c) raises a potential trap for the unwary. While subdivision (c) requires the technology and hardware and software systems to include certain capabilities, the regulatory provision by no means describes everything that the statute	

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			requires in those systems. For example, the statute, in 19604.5(d), requires as part of the licensee's application "security policies and safeguards to ensure player protection and integrity, including, but not limited to, provisions governing the acceptance of electronic applications for persons establishing exchange wagering accounts, vocation and age verification confirmation for persons establishing exchange wagering accounts, the use of identifying factors to ensure security of individual accounts, and the requirements for management of funds in exchange wagering accounts." It goes on to require that the systems shall prevent the acceptance of a wager if the results of the wager would create a liability for the account holder that is in excess of the funds on deposit for that holder. None of the statutory provisions listed above are included in subdivision (c), giving rise to the false assumption that all that is required in the operating plan are systems that will accomplish the limited provisions of this subdivision. The omission of critical provisions of the requirements of the technology systems creates a lack of clarity in this regulatory provision.	
CDTIC	**Section 2086.9 Financial and Security Integrity Audits Required.** (a) Ninety days after the end of each calendar year the exchange provider shall submit to the Board an annual financial statement for its California operations. (b) On a calendar year basis the provider shall undergo the Statement on Standards for Attestation Engagements 16	(a) ~~Ninety~~ One hundred and twenty days after the end of each calendar year the exchange provider shall submit to the Board an annual financial statement. ~~for its California operations.~~ (~~b) On a calendar year basis the provider shall undergo the Statement on~~	This section requires, within 90 days after the end of the calendar year, an exchange provider to submit an annual financial statement for its California operations, including audits. This section also requires the provider to undergo the Statement on Standards for	

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	(SSAE 16) audits: (1) Service Organization Controls I (SOC I) and; (2) Service Organization Controls II (SOCII) reports. The SOC I and SOC II reports shall be submitted to the Board ninety days after the end of the calendar year.	~~Standards for Attestation Engagements 16 (SSAE 16) audits:~~ ~~(1) Service Organization Controls I (SOC I) and;~~ ~~(2) Service Organization Controls II (SOCII) reports.~~ ~~The SOC I and SOC II reports shall be submitted to the Board ninety days after the end of the calendar year.~~	Attestation Engagements 16 (SSAE 16) audits. TwinSpires recommends that the time to submit the financial statements and the audits be extended to at least 120 days. It is very difficult to obtain audited statements in any time less than 120 days. The Initial Statement of Reasons covering this section talks about the necessity for financial statements and audited reports. However, nothing in that statement discusses the necessity for submitting those documents within 90 days. The Initial Statement of Reasons contains no basis for determining that reports within 90 days is necessary. The absence of substantial evidence supporting the necessity of financial statements and audits within 90 days renders the provision invalid. The Board should solicit input from potential licensees and perhaps CPA firms to determine an appropriate time requirement and modify the regulation accordingly, supporting the new time requirement with the provided input. TwinSpires also urges the Board to drop the requirement that licensees be required to submit SSAE 16 audits. That audit form differs from the audits that public companies undergo to satisfy financial institutions, securities regulators, and others under a host of legal and contractual obligations. The SSAE 16 requirement adds an additional layer, increasing costs and imposing administrative burdens, without adding safeguards. In fact, the Board's Initial Statement of Reasons provides no	

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			evidence to demonstrate why, in its opinion, standard financial audits are insufficient to provide the information that is necessary to evaluate the financial standing of a licensee. Nowhere in that Statement is there any evidence about what information is critical to the Board. Hence, no justification exists for requiring SSAE 16 audits. Certainly, the reference to the fact that other entities are required to submit such audits has no application to exchange wagering licensees. It is important to note that those entities all provide services to other businesses, unlike the activities of an exchange wagering licensee that operates a business to consumer business. Further, no evidence is set out in the Statement describing the aspect of those entities' activities that make SSAE 16 audits necessary and how those activities relate to the activities of exchange wagering licensees. Referencing those other entities fails to demonstrate any necessity for imposing SSAE 16 audits on licensees.	
CDTIC	**Section 2087.5 Antepost Market** (a) Antepost market wagers are authorized and are wagers where one single wager is made on an outcome that includes both: (1) That the selected horse will run the race; and (2) That the selected horse will finish the race in the selected position of win, place, or show. (b) Antepost markets close for wagering at the close of entries.	~~(~~ ~~a) Antepost market wagers are authorized and are wagers where one single wager is made on an outcome that includes both:~~ ~~(1) That the selected horse will run the race; and~~ ~~(2) That the selected horse will finish the race in the selected position of win, place, or show.~~ ~~(b) Antepost markets close for wagering at the close of entries.~~	This section provides that antepost market wagers are authorized and are wagers where one single wager is made on an outcome that includes both that the selected horse will run the race and that the selected horse will finish the race in the selected position of win, place, or show. This section, at best, lacks clarity and, if it means what it says, it is adopted in excess of the Board's authority, and it is inconsistent with specific provisions of SB 1072.	

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		[If Antepost wages are not deemed to be a single wager that violates the pari-mutuel pool concept then then as picked up in our comments on 2086.1, the exchange provider must have specific written approval from the host track to offer this type of wager.]	This section appears to allow a single wager on an outcome. Is that what is intended? If not, this section should be amended to clarify what is intended. If this is what is intended, it exceeds the Board authority and is inconsistent with the statute. The statute, in section 19604.5(a)(7), defines exchange wagering to mean "a form of parimutuel wagering in which two or more persons place identically opposing wagers in a given market." Nothing in the legislation contemplates a wager placed by one person. This section is an unauthorized expansion of the exchange wagering legislation and is inconsistent with a specific statutory provision, the definition of exchange wagering. This section is invalid for lack of authority and lack of consistency with the underlying statute.	
CDTIC	**Section 2087.6 Cancellation of Matched Wagers.** (a) An exchange provider may cancel or void a matched wager matched wager if required by law or where, in its sole discretion, it determines:	(a) An exchange provider may cancel or void a matched wager or part of a matched wager if required by law or where, in its sole discretion, it determines:	Subdivision (a) provides that "an exchange provider may cancel or void a matched wager if required by law or where, in its sole discretion, it determines" any one of a number circumstances. This regulatory section is inconsistent with the statute that it purports to implement, that is, section 19604.5(k). The statute provides, "the board may prescribe rules governing when an exchange wagering licensee may cancel or void a matched wager **or part** of a matched wager . . ." The regulatory section is inconsistent with the statute in that it omits the right to cancel or void a part of a wager and under what circumstances. This section	

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			should be amended to be consistent with the statute.	
CDTIC	**Section 2088.6 Cancellation of Unmatched Wagers.** An unmatched wager may be cancelled by the exchange provider at any time before it is matched by the provider to form one or more identically opposing wagers.	An unmatched wager may be cancelled by the exchange provider or the customer who placed such unmatched wager without cause at any time before it is matched by the provider to form one or more identically opposing wagers.	This section provides that, "an unmatched wager may be cancelled by the exchange provider at any time before it is matched by the provider to form one or more identically opposing wagers." The statutory provision being implemented by this section is subdivision (j) of section 19064.5. Subdivision (j) provides that, "an exchange wagering licensee may cancel or allow to be cancelled any unmatched wagers without cause, at any time." The regulatory provision omits the phrase "without cause." The Board may consider this section to have the same effect as the statutory provision; however, the omission of the phrase "without cause" can give rise to whether the Board intended its regulation to have a different meaning than that contemplated by the Legislature. To avoid potential misinterpretations, the Board is urged to add "without cause" to the regulatory provision.	
CDTIC	**Section 2089 Errors In Payments of Exchange Wagers.** If an error occurs in the payment of amounts for exchange wagers, the following shall apply: (a) In the event the error results in an over-payment to the individuals wagering, the exchange provider shall be responsible for such payment.	If an error occurs in the payment of amounts for exchange wagers, the following shall apply: (a) In the event the error results in an over-payment to the individual's wagering, the exchange provider ~~shall be responsible for such payment~~ will notify the account holder and make the corresponding adjustment to the individual's account.	Subdivision (a) of this section provides that, "in the event the error results in an over-payment to the individuals wagering, the exchange provider shall be responsible for such payment." The statute, section 19064.5(k), provides that the rules may include, "permitting the exchange wagering licensee to place corrective wagers under circumstances approved in the rules adopted by the Board." The statute does not make a distinction between errors that result in	

			overpayments and underpayments. Accordingly, one turns to the Initial Statement of Reasons in an attempt to determine why the Board made a distinction to deny corrective wagers in the event of an overpayment. The Initial Statement of Reasons simply states that that provision is consistent with current practices. No explanation is given as to why the Board concludes that it is necessary. No explanation is given as to why practices in other wagering should be applicable to exchange wagering. In fact, the Initial Statement of Reasons contains no evidence to demonstrate the necessity for this provision.	
CDTIC	**Section 2089.5 Requirements to Establish an Exchange Wagering Account.** (a) An exchange wagering account is necessary to place exchange wagers. Exchange wagering accounts may be established by residents of California. Residents of another jurisdiction may establish exchange wagering accounts provided it is not unlawful under United States federal law or the law of that jurisdiction to place an exchange wager. An account may be established in person, by mail, telephone, or other electronic media including but not limited to the Internet. An account shall not be assignable or otherwise transferable. An account may not be issued to a bookmaker or used by a bookmaker or for bookmaking.	(a) An exchange wagering account is necessary to place exchange wagers. Exchange wagering accounts may be established by residents of California. Residents of another ~~jurisdiction~~ state may establish exchange wagering accounts provided it is not unlawful under United States federal law or the law of that ~~jurisdiction~~ state to place an exchange wager. An account may be established in person, by mail, telephone, or other electronic media including but not limited to the Internet. An account shall not be assignable or otherwise transferable. An account may not be issued to a bookmaker or used by a bookmaker or for bookmaking.	Subdivision (a) of this section raises clarity, authority, and workability issues. One of the clarity issues is discussed first because it frames the authority and workability issues. That subdivision provides that "Residents of another jurisdiction may establish exchange wagering accounts provided it is not unlawful under United States federal law or the law of that jurisdiction to place an exchange wager." The clarity concern is manifested by the question, Does "another jurisdiction" include foreign countries or just other states in the United States?" Logically, the answer to the question is that it refers only to other states in the United States. It is unclear if the Board intends to permit California residents to directly wager with and against offshore residents, if the Board purports to regulate and profit from offshore residents, and how does the	

			Board intend to deal with the potential conflict over such wagers with the regulation in the applicable foreign country. If, however, the Board has another intent, it should declare that intent; although doing so raises substantial authority and workability concerns. In any circumstance, the Board should not leave the meaning of this provision vague and the fundamental question unanswered. The authority issue that arises if the Board contemplates opening up exchange wagering in California to residents from throughout the world occurs by virtue of the statute authorizing exchange wagering. That statute, section 19604(b)(3) provides that "exchange wagering shall be conducted pursuant to and in compliance with the provisions of the Interstate Horseracing Act of 1978 (15 U.S.C. Sec. 3001 et seq.) ("IHA") . . ." The IHA authorizes residents of one state to place bets on horseracing conducted in another state. It specifically is limited to residents of the United States. Hence, the only way exchange wagering can be conducted pursuant to and in compliance with IHA is to construe "another jurisdiction" to be limited to other states within the United States. The Board is urged to amend the regulation to replace the phrase "another jurisdiction" with "another state in the United States." If the Board fails to make the amendment suggested in the preceding paragraph and tries to open exchange	

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			wagering in California to residents of other countries, it will be disadvantaging California bettors. As the Board notes in its Initial Statement of Reasons, exchange wagering today is conducted only in other countries. Residents of those countries have significant experience with exchange wagering; they've developed sophisticated wagering strategies. If permitted to establish accounts, they will feast on the naïve California bettors who have had no experience with exchange wagering. Putting California bettors at such a distinct disadvantage could doom exchange wagering to fail. Confusion is highlighted by Betfair's suggestion that commissions (and thus revenues passed along to the California horse racing industry) are only earned on net winning wagers so that if a foreign (provided that it is unclear whether permitted at this point) customer wins against a California resident, has any commission been earned for California racing interests? For the sake of California bettors and the long-term success of the program, the Board should make clear that only residents of other states in the United States may establish accounts. The second clarity issue revolves around the provision that residents of another jurisdiction may establish wagering accounts "provided it is not unlawful under United States federal law or the law of that jurisdiction." The question is who determines whether it is lawful for a resident of another jurisdiction to establish such an account? Who bears	

			what liability if a resident of a state prohibiting its residents from engaging in interstate gaming establishes such an account? What process does the Board contemplate using to obtain resolution of these issues? Exchange wagering is at substantial risk if the regulation fails to include a mechanism for addressing and determining who may lawfully establish an exchange wagering account. The final issue of concern with respect to subdivision (a) relates to bookies establishing exchange wagering accounts. Recently, it has been reported that bookmakers in England have established accounts with Betfair and routinely place wagers as part of their risk management. This is an issue that the regulations should address. Does the Board intend to allow bookies to place wagers on the exchange? If not, what mechanism does the Board contemplate to ferret out an undesirable use of exchange wagering? If so, how does the Board intend to protect less sophisticated California wagers from being victimized by bookies? The Board is urged to schedule a workshop to solicit comments and ideas about dealing with an aspect of exchange wagering that is very likely to undermine, rather than promote, the economic future of the horseracing industry in California and dampen, rather than foster, increased commerce, employment, and recreational opportunities in California. In England, questions have been raised about whether bookmakers using an	

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			exchange should be required to obtain a license to do so. While making book is illegal in the United States, the experience in England highlights two points that California should address. The first is that bookies will use exchange wagering to manage their risk. The second is that it is a phenomenon that is pervasive enough elsewhere to threaten the intent and purpose of exchange wagering in California. TwinSpires strongly urges the Board to address this issue. The Board has the legal authority to adopt a regulation that seeks to minimize, if not eliminate, bookies using an exchange. Section 19604.5(c) provides that a person shall not be permitted to open an exchange wagering account, or place an exchange wager, except in accordance with federal law, this section, and these regulations, and only natural persons may place wagers. That provision allows the Board to adopt a regulation and establish standards to address the misuse of exchange wagering. Further, the Board is free to define "natural person" to exclude a person who operates a bookmaking business. Doing so furthers the purposes of exchange wagering in California.	
CDTIC	**Section 2089.5 Requirements to Establish an Exchange Wagering Account.** (d) An exchange provider may refuse to establish an account, or may cancel or suspend a previously established account, without notice, if it is found that any information supplied by the prospective account holder is untrue or incomplete.	(d) An exchange provider may refuse to establish an account, or may cancel or suspend a previously established account, without notice, if it ~~is found~~finds that any information supplied by the prospective account holder is untrue or incomplete, or for any other reason as determined by the exchange	Subdivision (d) of this section raises both a clarity issue and a workability concern. Subdivision (d) provides that an exchange provider may refuse to establish an account or cancel or suspend a previously established	

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		provider.	account "if it is found that any information supplied by the prospective account holder is untrue or incomplete." The ambiguity of this provision is who makes the finding that the information is untrue or incomplete? Logically, it would be the exchange provider. However, the regulation does not make that explicit. Nothing in the Initial Statement of Reasons adds any clarity to this provision. The Board is urged to amend this provision to provide that if the exchange provider finds that information provided is untrue or incomplete, it may refuse to establish, cancel, or suspend an account. The second concern, relating to workability, is that an exchange provider should be able to refuse to establish an account or cancel or suspend an account for reasons other than the fact that the information supplied is untrue or incomplete. Any number of reasons may arise that would cause an exchange provider to become concerned about establishing an account or maintaining an account. To ensure maximum integrity of the system, the exchange provider should be able to deny or terminate accounts where those issues arise as well. Accordingly, the Board is urged to amend the provision to include "or for any other reason" as grounds for refusing to establish or for cancelling or suspending an account.	
CDTIC	**Section 2089.6 Deposits to an Exchange Wagering Account.** Deposits to an exchange wagering account shall be made, in person, by mail, by telephone, or by other electronic media,	Deposits to an exchange wagering account shall be made, in person, by mail, by telephone, or by other electronic media, as follows:	TwinSpires urges the Board to make two amendments to this section to promote greater workability. Subdivision (a) of this section provides that an account	

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	as follows: (a) The account holder's deposits to the account shall be submitted by the account holder to the exchange provider and shall be in the form of one of the following: (1) cash given to the exchange provider; (2) check, money order, negotiable order of withdrawal, or wire or electronic transfer, payable and remitted to the exchange provider; or (3) charges made to an account holder's debit or credit card upon the account holder's direct and personal instruction, which instruction may be given by telephone communication or other electronic media to the exchange provider or its agent by the account holder if the use of the card has been approved by the exchange provider. (4) the name and billing address for any credit card, debit card, bank account, or other method of payment through which an account holder funds or transfers from an account shall be the same as the account holder's registered name and address.	(a) The account holder's deposits to the account shall be submitted by the account holder to the exchange provider and shall be in the form of any~~one~~ of the following as may be accepted by the exchange provider: (1) cash given to the exchange provider; (2) check, money order, negotiable order of withdrawal, or wire or electronic transfer, or other recognized method of payment, payable and remitted to the exchange provider; or (3) charges made to an account holder's debit or credit card upon the account holder's direct and personal instruction, which instruction may be given by telephone communication or other electronic media to the exchange provider or its agent by the account holder if the use of the card has been approved by the exchange provider. (4) the name and billing address for any credit card, debit card, bank account, or other method of payment through which an account holder funds or transfers from an account shall be the same as the account holder's registered name and address.	holder shall make deposits to the account in certain specified forms. The Board is urged to add just before the various forms are described the phrase, "as may be accepted by the exchange provider." The purpose of this addition is that an exchange provider may not be set up to accept deposits in all of those forms. It is appropriate that the provider have a voice in the form of the deposit rather than compel the provider to accept any form at the choice of the account holder. Most likely, the Board did not intend the result of the current provision; the proposed amendment will address the concern. The second proposed amendment is to add near the end of paragraph (2) that describes an acceptable form of deposit, (2) check, money order, negotiable order of withdrawal, or wire or electronic transfer, the following phrase, "or other recognized method of payment." The purpose of this addition is to recognize that other forms of payments will no doubt evolve, and by including a more expansive phrase, the regulation will not have to be amended to accommodate the new forms.	
CDTIC	**Section 2092 Exchange Wagers Placed After the Start of a Race.** (a) As reflected in the exchange provider's operating plan and as approved by the Board, an exchange provider may accept wagers placed on a market after the start of a live race but before the results of that race have been declared official. (b) No exchange wagers shall be placed on a market after the conclusion of a live race.	(a) As reflected in the exchange provider's operating plan and as approved by the Board, an exchange provider may accept wagers placed on a market after the start of a live race but before the ~~results~~ conclusion of that race ~~have been declared official~~. (b) No exchange wagers shall be placed on a market after the conclusion of a live race.	Subdivision (a) of this section provides that, "an exchange provider may accept wagers placed on a market after the start of a live race but before the results of that race have been declared official." This provision raises two concerns, consistency with the statute and clarity. Section 19064.5(e)(3)(B) of the statute provides that, "No exchange wagers	

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	(c) Exchange wagering on previously run races is prohibited.	(c) Exchange wagering on previously run races is prohibited.	shall be placed on a market after the conclusion of a live race." (Emphasis added.) There is clearly a distinction between the conclusion of a live race and a race having been declared official. In fact, the Board, in section 2090 relating to posting credits or winnings from exchange wagers, notes the distinction. Subdivision (a) of that section provides that, "credit for winnings from matched wagers shall be posted to the account by the exchange provider after the race is declared official." (Emphasis added.) Subdivision (b) provides that, "where the outcome of a matched wager can be determined with certainty by the exchange provider prior to the time that the race is declared official, the exchange provider may settle such matched wagers as soon as that outcome is determined with certainty." Hence, there is clear recognition that the outcome of the race may be determined after the race is completed and before it is declared official. Yet, section 2092(a) permits a wager to be placed after the race is concluded, even after the outcome is determined, but before it has been declared official. That portion of the regulation is inconsistent with the statute and should be amended to track the language of the statute. The second concern relates to clarity of the section. Whereas subdivision (a) permits a wager to be placed any time before the race has been declared official, subdivision (b) provides that no exchange wagers shall be placed on a	

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			market after the conclusion of a live race. Yet, the conclusion of a live race occurs prior to a race being declared official. It is that time period that renders subdivision (a) as currently written inconsistent with the statute, unclear, and therefore, invalid.	
CDTIC	**Section 2092.6 Suspension of Occupational License.** (a)The Board of Stewarts may suspend the license of a person if it determines there is probable cause to believe that such person may have committed acts of fraud in connection with exchange wagering or any other action or inaction which threatens the integrity or fairness of any exchange wagering.	(a)The Board of Stewarts may suspend the occupational license issued by the Board of a person if it determines there is probable cause to believe that such person may have committed acts of fraud in connection with exchange wagering or any other action or inaction which threatens the integrity or fairness of any exchange wagering.	Subdivision (a) of this section provides that the Board of Stewards may suspend the license of any person under specified circumstances. While the section is entitled Suspension of Occupational License and the issuance of a license to an exchange provider is not an occupational license, the language of subdivision (a) nevertheless raises a substantial clarity issue. Does this section apply to an exchange wagering licensee? The question is more than academic. The rule of statutory and regulatory construction is that the headings of statutes and regulations are not to be considered, only the substantive provisions of the legislation and regulation. Hence, the heading of this section, Suspension of Occupational License, cannot be considered to narrow the authority granted to the Board of Stewards to apply only to those persons holding licenses who are engaged in horse racing. This section should be amended to make it clear in the body of the regulation that it is limited to certain persons and does not apply to the holder of exchange wagering licensees. It goes without saying that nothing in the statute confers any authority on the Board of Stewards to be involved in any way with granting, denying, or	

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			suspending the licenses of exchange providers. The authority problem, of course, can be addressed by addressing the clarity concerns.	